House Rules Changes in the 111th Congress Affecting Floor Proceedings

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Summary

On the first day of the 111th Congress, the House agreed to H.Res. 5, which made several changes to House rules affecting floor proceedings. First, the House amended clause 6 of Rule XV to require that Calendar Wednesday only occur at the request of a committee. Calendar Wednesday is a rarely-utilized procedure that allows reported legislation, not otherwise privileged for floor consideration, to be called up by the committee of jurisdiction on Wednesdays. Prior to this rules change, unanimous consent was routinely granted to waive the Calendar Wednesday procedure.

The House also added a paragraph to clause 1 of Rule XIX to grant the presiding officer the authority to postpone consideration of legislation. Under the new paragraph, if legislation is being considered under the typical terms of a special rule, the presiding officer can postpone further consideration to a time designated by the Speaker. During the 110th Congress, special rules usually included a provision granting the presiding officer this authority, and the addition of this paragraph to the standing rules makes such provisions unnecessary. The authority allows the presiding officer to postpone consideration even after the motion to recommit has been offered.

In addition, the House amended House Rule XIX, clause 2(b), to allow 10 minutes of debate on any motion to recommit in order under this rule. Prior to this rules change, a straight motion to recommit, which proposes to send the measure back to committee without instructions, was not debatable. The rule was further amended to require that any instructions in a motion to recommit be to report back an amendment "forthwith." It was previously in order to offer motions to recommit with instructions that did not propose that the committee report back "forthwith." For example, Members could propose instructions that the committee hold hearings, or report back a measure "promptly" with an amendment. The primary procedural effect of a motion to recommit with any instructions other than to report back "forthwith" was the same as a straight motion to recommit: the measure would be returned to committee with no requirement for further action.

Finally, the House removed from House Rule XX, clause 2(a), a provision that aimed to prohibit the presiding officer from holding a vote open "for the sole purpose of reversing the outcome of such vote." The provision had been added at the start of the 110th Congress, but due in part to issues concerning its enforceability, its deletion was recommended by the Select Committee to Investigate the Voting Irregularities of August 2, 2007.

At the start of the 111th Congress, the Speaker made customary announcements concerning House operations and the legislative process, with two modifications related to floor proceedings. First, the Speaker announced her endorsement of the existing process for closing a vote by electronic device. This announcement does not change long-standing practices for closing votes, but it states that the best practice is for presiding officers to rely on certification from the clerks that a vote tally is complete and accurate. Second, pursuant to authority granted to the Speaker over "general control of the Hall of the House" in House Rule I, clause 3, the Speaker announced that the chamber of the House should not be used for "mock proceedings on the floor" or "political rallies."

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Rules Changes Affecting House Floor Procedure

On the first day of the 111th Congress, the House agreed to H.Res. 5, which made several changes to House rules affecting floor proceedings. Following a well-established practice, H.Res. 5 provided that the rules of the previous Congress be the rules of the new Congress, but with a set of amendments. Four changes to the standing rules of the House concern the transaction of business on the floor in the 111th Congress.[1]

Adjustment to Calendar Wednesday Procedure

Calendar Wednesday is a rarely-utilized procedure that allows committee-reported legislation, not otherwise privileged for floor consideration, to be called up by the committee of jurisdiction on Wednesdays. Only the chair or another Member specifically authorized by a majority of the committee can call up legislation under the procedure. H.Res. 5 amended clause 6 of Rule XV to require that the Calendar Wednesday procedure only occur at the request of a committee. Prior to this rules change, the call of committees would automatically occur on Wednesdays unless the House specifically waived the procedure. For many years, the House routinely waived the Calendar Wednesday procedure by unanimous consent; absent unanimous consent, a two-thirds vote of the House was necessary to waive the procedure. H.Res. 5 also eliminated the provision in House Rule XIII, clause 6, that prevented the Rules Committee from reporting a special rule that would allow the House to waive Calendar Wednesday with less than two-thirds support. One effect of these changes is to eliminate the need for the Majority Leader or his designee to seek unanimous consent to waive the procedure each week.[2]

The contemporary Congress has not considered legislation under the Calendar Wednesday procedure.[3] The House adopted the Calendar Wednesday rule in 1909 for the purpose of providing a means by which committees could call up legislation that was not otherwise privileged for consideration on the House floor. The new set of procedures initially proved ineffective as a means of guaranteeing each committee equal opportunity to call up measures for consideration. The House soon adjusted the rule, however, and thereafter until the 1940s the procedures were followed regularly as a means for a committee majority to bring up a measure without having to arrange consideration through party leadership or to secure unanimous consent.[4] Over time, however, the House came to rely on other means to process business, and in

[1] The resolution also made technical and grammatical changes to the House Rules that are not described in this report.

[2] On March 29, 2007, a Representative objected to a unanimous consent request that the business in order under the Calendar Wednesday procedure be dispensed with on the next Wednesday the House was expected to be in session (*Congressional Record*, daily edition, vol. 153 (March 29, 2007), p. H3339). As a result, on that next Wednesday, the Clerk read the name of each standing committee. No committee chair called up a measure (*Congressional Record*, daily edition, vol. 153 (April 18, 2007), p. H3481). In the 110th Congress, the failure to obtain unanimous consent to waive the procedure also led to the call of committees on March 12, 2008, May 7, 2008, and May 14, 2008. No committee chair called up a measure on any of these days.

[3] According to the published precedents of the House, "The Calendar Wednesday procedure has been little utilized in recent years due to its cumbersome operation and to the fact that nonprivileged bills may be considered pursuant to a special order from the Committee on Rules, under suspension of the rules, or by unanimous consent." (*Deschler's [and Deschler-Brown] Precedents of the House of Representatives*, 94th Cong., 2nd sess., H.Doc. 94-661 (Washington: GPO, 1977) (hereafter *Deschler*), ch. 21, sec. 4, p. 83).

[4] CRS Congressional Distribution Memorandum, *Information Regarding Measures Considered Under Calendar Wednesday Procedure in the House of Representatives, 1943-1982*, by Richard Beth (available from the authors); *Cannon's Precedents of the House of Representatives* (Washington: GPO, 1935), vol. 7, sec. 881, pp. 65-67; De Alva (continued...)

the 1960s, the House began to use suspension of the rules with increasing frequency.[5] The Calendar Wednesday procedure has been used very rarely since then because, generally speaking, committees are able to arrange instead for measures to be considered under suspension of the rules or under the terms of a special rule reported by the Rules Committee.

The recent rules change preserves the Calendar Wednesday procedure if a committee wishes to utilize it in the future, although it differs from the earlier procedure in at least two important respects. First, it requires that only the committee(s) requesting the Calendar Wednesday procedure be called, rather than all the committees alphabetically as was previously required. Second, by eliminating the prohibition against the Rules Committee reporting a rule to waive Calendar Wednesday with less than two-thirds support, the rules change allows a simple majority of the House to vote to prevent the procedure, even if requested by a committee.[6]

Granting Presiding Officer Authority to Postpone Consideration of Legislation

H.Res. 5 added a paragraph to clause 1 of Rule XIX to grant the presiding officer the authority to postpone consideration of legislation. Under the new paragraph, if legislation is being considered under the terms of a typical special rule, the presiding officer can postpone further consideration to a time designated by the Speaker. In the 110th Congress, special rules routinely included a provision giving the Speaker the authority to postpone consideration of legislation. One effect of adding this paragraph to the standing rules is that it will no longer be necessary to include in special rules a section permitting postponement.

Although a motion to postpone consideration of legislation is in order under clause 4 of House Rule XVI, some standard provisions of special rules had the effect of preventing a Member from offering the motion to postpone. Nearly all special rules providing for the initial consideration of legislation expedite the procedural steps that occur just prior to final passage. More specifically, most special rules provide that, after the period allowed (if any) for offering amendments under the regular rules of the House,[7] the "previous question" is considered as ordered on the bill and

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Stanwood Alexander, *History and Procedure of the House of Representatives* (New York: Lenox Hill, 1916), p. 224; Paul DeWitt Hasbrouck, *Party Government in the House of Representatives* (New York: The Macmillan Company, 1927), pp. 130-132.

[5] (name redacted), "Suspension of the Rules, the Order of Business, and the Development of Congressional Procedure," *Legislative Studies Quarterly*, vol. 15, no. 1 (February 1990), p. 59.

[6] H.Res. 5 deleted from clause 6(a) of Rule XV the privileged motion for dispensing with the Calendar Wednesday procedure. If a committee chair has requested the procedure, a majority of the House could prevent it by agreeing to a special rule reported by the Rules Committee.

[7] Typically, if a special rule allows for more than one amendment, it prescribes that the House conduct the amendment process in the "Committee of the Whole House on the state of the Union." The Committee of the Whole is a parliamentary device designed to allow for more efficient consideration of legislation and greater participation in debate than is effectively possible in the House meeting as the House. It can be understood as the assembly of the House in a different form; it is a committee of the House that every Member belongs to and that meets on the House floor. Under the standing rules of the House, it is possible for the Committee of the Whole to put off consideration of a measure. While a measure is being considered in the Committee of the Whole, a Member can offer a motion that the Committee of the Whole rise, and if it is agreed to then the Committee of the Whole converts back into the House, and the pending business is left unfinished until the House resolves back into the Committee of the Whole for its further consideration.

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any amendments without any intervening motions except those specifically allowed in the rule. The "previous question" motion ends all debate and prevents further amendments and motions.[8]

When the previous question is ordered to final passage, as it is in current practice under the terms of nearly all special rules, then a motion to postpone consideration of the bill, or even a motion to adjourn or recess, is not in order. In other words, the House could not, even by majority vote, halt consideration of the legislation. In the past, the House agreed to special rules that granted the Speaker the authority to postpone consideration when it anticipated that such authority might be useful. For example, in the 107th Congress (2001-2002), a special rule (H.Res. 574) providing for consideration of a measure authorizing the use of the United States Armed Forces against Iraq allowed 17 hours of general debate and the consideration of two amendments, followed by an additional hour of debate. The rule included a section authorizing the Speaker to postpone consideration of the legislation, and the Speaker did so twice, once at the end of the day on October 8, 2002, and again at the end of the day on October 9, 2002.[9]

In recent years, the frequency of including such provisions in special rules has increased.[10] The provision was included in only one special rule each during the 106th (1999-2000) and 107th (2001-2002) Congresses. In the 108th Congress (2003-2004), the provision was included in 5% (6/129) of the special rules adopted for the initial consideration of bills and resolutions. In the 109th Congress, it was included 9% (12/137) of the time. The provision appeared more frequently in special rules in the 110th Congress, when it was included in 98% (157/161) of the special rules that provided for the consideration of bills and resolutions.

In the 110th Congress, the inclusion of the provision allowed the Speaker to delay consideration of legislation after a motion to recommit was offered. As discussed at length below, House Rules allow a Member of the minority party to offer a motion to recommit just prior to final passage of a bill.[11] The motion to recommit with instructions to report back "forthwith" is effectively a last chance opportunity for a Member of the minority party to offer an amendment to the measure. The motion to recommit need not be available to Members prior to being offered on the floor. In the 110th Congress, the House actually postponed consideration of a bill on six occasions.[12] In

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Typically, "open rules," or rules that allow any amendments otherwise in order, state that the previous question shall be considered as ordered after the Committee of the Whole rises and reports. "Structured rules," which allow some amendments specifically identified in the report of the Rules Committee, also typically include a period for consideration in the Committee of the Whole and provide for the previous question to be considered as ordered after the Committee rises and reports. Other special rules, including "closed" rules which do not allow amendments, typically provide for consideration in the House and state that the previous question shall be considered as ordered without intervening motion except any general debate and the motion to recommit.

[8] Special rules state that the previous question shall be considered as ordered to expedite proceedings. First, it saves the time of having to vote on the previous question. Second, in some cases, it is necessary for the House to order the previous question in order to prevent further debate or amendment. For an extended discussion of this standard provision of special rules and its effect, see CRS Report 96-938, *Special Rules in the House of Representatives*, by (name redacted), (name redacted), and (name redacted).

[9] *Congressional Record*, daily edition, vol. 148 (October 8, 2002), p. H7301; (October 9, 2002), p. H7735.

[10] Special rules containing the provision were identified through a full text search of the Legislative Information System. The total number of rules providing for the consideration of bills and resolutions is taken from the *Survey of Activities of the House Committee on Rules* for the respective Congresses.

[11] For additional discussion of the motion to recommit, see CRS Report RL34757, *The Motion to Recommit in the House of Representatives: Effects and Recent Trends*, by Megan Suzanne Lynch.

[12] The Chair postponed consideration of legislation to a time designated by the Speaker, pursuant to the provision in a (continued...)

four of those cases, consideration was postponed after a motion to recommit was offered, but before it was voted on.[13] In a fifth case, consideration was postponed before the motion to recommit was offered, but it was reported that the Speaker postponed consideration because of an anticipated motion to recommit.[14]

The inclusion in the standing rules of authority to postpone measures being considered under the terms of a special rule reflects, to some degree, previous patterns in Rules development. In the past, the House has adopted into its standing rules a provision that had become standard language in special rules. For example, by the 106th Congress (1999-2000), it had become standard for special rules that allowed the offering of amendments to include a provision that gave the presiding officer the authority to postpone a request for a recorded vote on any amendment. In the 107th Congress (2001-2002), House Rule XVIII was amended to incorporate, in clause 6(g), a general grant of this authority to the presiding officer.

Modifications to the Motion to Recommit

H.Res. 5 amended House Rule XIX, clause 2(b) to require that a motion to recommit a bill or joint resolution with instructions consist only of directions to report back an amendment "forthwith."[15] The adoption of such a motion has the effect of bringing an amendment immediately before the House. Under House rules and precedents, minority party members are given preferential recognition to offer the motion. H.Res. 5 also amended the rule to allow 10 minutes of debate on any motion to recommit, even if the motion does not contain any instructions. If a motion to recommit a bill does not contain instructions, then adoption of the motion would return the bill to the committee in the form it was introduced.

As discussed in detail below, the changes to the rule eliminated the opportunity for Members to offer motions to recommit with instructions that the committee do anything other than report back "forthwith." For example, it is no longer in order to offer a motion to recommit instructing the committee to report back a measure "promptly" with an amendment. The primary procedural effect of any motion to recommit with instructions other than to report back "forthwith" was the same as that of a motion to recommit without any instructions: the measure would be returned to

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special rule, six times during the 110th Congress. (1) On March 22, 2007 proceedings on H.R. 1433 were postponed pursuant to section 2 of H.Res. 260. (2) On October 17, 2007 proceedings on H.R. 3773 were postponed pursuant to section 2 of H.Res. 746. (3) On February 13, 2008 proceedings on H.R. 5349 were postponed pursuant to section 2 of H.Res. 976. (4) On February 26, 2008 proceedings on H.R. 3521 were postponed pursuant to section 2 of H.Res. 974. (5) On March 6, 2008 proceedings on H.R. 2857 were postponed pursuant to section 2 of H.Res. 1015. (6) On June 24, 2008 proceedings on H.R. 5876 were postponed pursuant to section 2 of H.Res. 1276.

[13] "Motion to Recommit Offered by Mr. Smith of Texas," *Congressional Record*, daily edition, vol. 153 (March 22, 2007), p. H2863; "Motion to Recommit Offered by Mrs. Bachmann," *Congressional Record*, daily edition, vol. 154 (February 26, 2008), p. H1056; "Motion to Recommit Offered by Mr. Kuhl of New York," *Congressional Record*, daily edition, vol. 154 (March 6, 2008), p. H1398; "Motion to Recommit Offered by Mrs. Bachmann," *Congressional Record*, daily edition, vol. 154 (June 24, 2008), p. H5962.

[14] Tim Starks and Jonathan Allen, "Democrats Postpone Vote on Surveillance Bill," *CQ Today Online News*, October 17, 2007. In the sixth case, the Speaker postponed consideration of a measure for reasons apparently unrelated to the motion to recommit.

[15] Under House Rule XIX, clause 2, one motion is in order to recommit a bill or joint resolution after the House has ordered the previous question on the measure and before the vote on passing it, and this report addresses only the form of motion to recommit available at this stage of the process. For a brief overview of procedures related to this motion, see CRS Report 98-383, *Motions to Recommit in the House*, by (name redacted).

committee with no requirement for further action.[16] Under the new form of the rule, motions to recommit without instructions are still in order and are now debatable, providing an opportunity for proponents to discuss any actions they hope the committee will take with regard to the legislation.

Instructions in a Motion to Recommit Must Direct Committee to Report "Forthwith"

Prior to the rules change at the start of the 111th Congress, a motion to recommit with instructions could have omitted the term "forthwith" (referred to as a motion to recommit with non-forthwith instructions). Non-forthwith instructions could include language instructing the specified committee(s) either to report the measure back with an amendment or to take some other action, such as conducting further research or holding hearings. Such instructions were considered advisory and did not compel a committee to take any action. In the 110th Congress, some motions to recommit with instructions proposed that the committee report back "promptly" an amendment. Although they included the language of an amendment, these motions did not direct the committee to report back "forthwith," and, therefore, if adopted, would have only returned the bill to the specified committee with no requirement for further action. In short, motions to recommit with instructions to report back "promptly" did not bring an amendment immediately before the House.

Motions to recommit with non-forthwith instructions were offered more frequently in the 110th Congress (2007-2008) than in the past. From the 101st (1989-1990) through the 109th Congress (2005-2006), an average of about eight motions to recommit with non-forthwith instructions were offered each Congress, while in the 110th (2007-2008), 47 such motions were offered.[17] Motions to recommit with non-forthwith instructions sometimes had the effect of creating a difficult choice for Members who supported both the underlying measure and the amendment contained in the motion to recommit. If such proponents of the measure voted for the motion to recommit with non-forthwith instructions, they were voting to send the measure back to committee, delaying and perhaps effectively defeating the bill. However, if such Members voted against the motion to recommit with non-forthwith instructions in order to move the underlying bill to passage more quickly, they would be on public record as having voted against a policy that they (and perhaps their constituents) strongly supported. In addition, some argued that the use of non-forthwith instructions to present specific policy amendments was not necessary, because the presumably preferable option of bringing the amendment immediately before the House could be achieved by drafting forthwith instructions.[18]

[16] In the absence of any instruction to the contrary, a motion to recommit with instructions other than to report back "forthwith" would return the measure to committee in the form it was introduced. On several occasions in the 110th Congress, however, non-forthwith instructions included the direction to report back the bill "in the form to which perfected at the time of this motion" with an amendment. See, for example, *Congressional Record*, daily edition, vol. 154 (April 23, 2008), p. H2626; (May 8, 2008), p. H3196; (May 22, 2008), p. H4812; (September 10, 2008), p. H7983.

[17] CRS Report RL34757, *The Motion to Recommit in the House of Representatives: Effects and Recent Trends*, by Megan Suzanne Lynch.

[18] On several occasions in the 110th Congress, attempts were made to arrange a unanimous consent agreement to change the word "promptly" in the motion to "forthwith." See, for example, *Congressional Record*, daily edition, vol. 154, Feb. 26, 2008, p. H1056; March 6, 2008, p. H1398; June 26, 2008, pp. H6141-H6142; July 16, 2008, pp. H6627-H 6628; September 23, 2008, p. H8612.

There were, however, other procedural differences between non-forthwith instructions and forthwith instructions. First, some restrictions on the content of amendments applied only to forthwith instructions. Most prominently, forthwith instructions that propose amendments that would not be in order under the Congressional Budget Act are subject to points of order under that act. In contrast, most Budget Act points of order did not apply to non-forthwith instructions because those points of order apply to the consideration of amendments, and a non-forthwith instruction did not propose that the House immediately consider an amendment.[19] In addition, a point of order could be made against a motion to recommit proposing that the committee report "forthwith" an amendment that would violate clause 10 of Rule XXI (the pay-as-you-go budget enforcement rule); no corresponding point of order applied to a motion with non-forthwith instructions.[20] Under the previous rule, a motion to recommit with amendatory instructions that might have violated the pay-as-you-go rule therefore could have been offered with non-forthwith instructions to avoid an immediate point of order.[21]

Second, non-forthwith instructions did not need to propose an amendment, and prior to the rules change motions to recommit could be used to instruct specified committee(s) to take some type of action. For example, in the past, some motions to recommit instructed committees to conduct further research or to hold hearings. These advisory instructions were not procedurally binding on the committee; no point of order could subsequently be raised if the committee failed to follow them. Under the new rule, these types of instructions are no longer in order.

Finally, if the goal of offering a motion to recommit was simply to return the measure to committee, perhaps for significant revisions or perhaps even to delay its consideration, non-forthwith instructions could have been included in the motion in order to secure time for debate. In previous Congresses, a straight motion to recommit was not debatable.

Debate Allowed on Straight Motions to Recommit

As explained above, the primary procedural result of agreeing to a motion to recommit with non-forthwith instructions and agreeing to a straight motion to recommit was the same: the measure would be returned to committee. Prior to the 111th Congress, however, consideration of the two forms of the motion to recommit was not the same. Straight motions to recommit were not debatable, while those with instructions (both forthwith and non-forthwith) were.

H.Res. 5 amended House Rule XIX, clause 2(b), to allow 10 minutes of debate on any motion to recommit in order under this rule.[22] As a result, debate is now in order on a straight motion to recommit as well as on a motion to recommit with instructions. All other procedures concerning the debate time on a motion to recommit remain the same: the time is equally divided between the proponent and an opponent of the motion, and each Member can yield to other Members to speak,

[19] For more information on Budget Act points of order, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by (name redacted).

[20] For more information on the so-called "PAYGO" rule, see CRS Report RL34300, *Pay-As-You-Go Procedures for Budget Enforcement*, by (name redacted).

[21] For example, see remarks, at "Motion to Recommit Offered by Mr. Cantor," *Congressional Record*, daily edition, vol. 153, May 22, 2007, p. H5570.

[22] As was the case before the rules change in the 111th Congress, the majority floor manager may demand that debate time be increased to one hour, equally divided and controlled by the proponent and an opponent.

but cannot yield portions of time (such as one minute) to other Members, and cannot reserve time. The opponent of the motion speaks after the time of the proponent has been exhausted.

The effect of this rules change is that Members may now offer a straight motion to recommit, seeking to send the bill back to committee, and secure debate time to express their goal in offering the motion. In other words, the Member making the motion can use this time to express his or her desires for committee actions, such as further research into alternative proposals. If the Member seeks to return the bill to committee in the hopes that the measure will not be brought again before the House, at least not in its present form, then he or she could use the five minutes to express reasons for opposition.

House rules related to the motion to recommit were last amended in 1995. Prior to 1995, a special rule reported from the Rules Committee could prevent the offering of a motion to recommit with instructions on a bill or joint resolution, as long as it allowed some form of a motion to recommit, normally a straight motion to recommit. At the beginning of the 104th Congress (1995-1996), the House amended its rules to prohibit the Rules Committee from reporting a special rule that would prevent the offering of a motion to recommit with instructions on a bill or joint resolution.[23]

Deletion of Restriction on Holding Vote Open

H.Res. 5 removed from House Rule XX, clause 2(a), a provision aimed at prohibiting the presiding officer from holding a vote open "for the sole purpose of reversing the outcome of such vote." The provision had been added at the start of the 110th Congress, but due in part to issues concerning its enforceability, its deletion was recommended by the Select Committee to Investigate the Voting Irregularities of August 2, 2007.[24]

Since the use of the electronic voting system began in the House in 1973, House rules have included a minimum, but not a maximum, length of time for a record vote by electronic device. Pursuant to clause 2 of Rule XX, the minimum length of time for an electronic vote shall be 15 minutes, unless the presiding officer has postponed the vote and scheduled a series of electronic votes back-to-back. If several votes are postponed, then after the first vote is held open for the minimum 15 minutes required by House rules, the presiding officer can reduce the minimum time for subsequent votes to 5 minutes each.[25]

Under the precedents of the House, the Chair has the discretion to allow additional time beyond the minimum requirement for Members to record their votes. Historically, it has not been uncommon for votes to be held open for at least a few minutes past the minimum time to allow Members to reach the floor. The provision deleted by H.Res. 5 aimed to limit the discretion of presiding officers by precluding them from allowing additional time to vote by electronic device

[23] *Congressional Record*, daily edition, vol. 141 (January 4, 1995), pp. H9-H23.

[24] U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Final Report and Summary of Activities*, 110th Cong., 2nd sess., September 25, 2008, H.Rept. 110-885 (Washington: GPO, 2008), pp. 22-24.

[25] House Rule XX, clause 8, identifies the questions the Speaker can postpone to be voted on at a later time, possibly as part of a series of votes. If notice has been given that 5-minute voting is expected for a series of votes in the House, the Speaker can also reduce to 5 minutes the minimum time allowed for a vote on a question that arises during or after the series of votes, provided that no business has intervened. House Rule XVIII, clause 6, identifies the circumstances under which the Chair of the Committee of the Whole can reduce to 5 minutes the minimum time for a vote.

"for the sole purpose of reversing the outcome of such vote."[26] The House agreed to the provision at the start of the 110th Congress as a reaction, in part, to an earlier instance of a vote being held open for nearly three hours.[27] In the 108th Congress, some Members contended that a vote was held open while party leaders attempted to reverse the expected outcome of the vote by persuading Members to switch their votes.[28]

In the 110th Congress, concerns arose regarding the enforceability of the new provision. It prohibited votes from being held open for a specified reason, and therefore seemed to require a determination of the motivations of the Chair. In addition, the provision did not provide a mechanism for immediate procedural redress, such as the closing of a vote. For example, a vote was reportedly held open in the 110th Congress for approximately a half hour, and some Members claimed leadership held the vote open to provide more time to persuade Members to switch their votes.[29] In response to parliamentary inquiries, the Chair explained that Members could only enforce the rule collaterally by raising a question of the privileges of the House at a later time.[30] This means of procedural redress was the same as existed prior to the 110th Congress rules change; indeed, questions of the privileges of the House were raised and considered in relation to the vote that was held open for nearly three hours in the 108th Congress.[31]

It was not clear, however, how the rule of the 110th Congress could have been enforced immediately, rather than collaterally.[32] If a point of order was raised during a vote that was not yet closed, the presiding officer would rule as to whether he or she was holding the vote open "for the sole purpose of reversing the outcome of such vote." Presumably, the chair would rule that he or she was not violating the House rule. That ruling would be subject to appeal, but the electronic voting system cannot accommodate the taking of a second vote (the appeal) with the original vote still pending. Even setting that arguably technical difficulty aside, the rule was silent with regard to the next stage. If the Chair ruled, or the House decided on appeal, that a vote was being held open too long, it was not clear what the status of the long vote would be. The vote could, for example, be considered vitiated, but others might argue that the vote should simply be closed at that point, while others might argue that it should be considered closed at the point before the outcome was reversed by holding the vote open. Enforcing the rule through a question of the

[26] U.S. Congress, *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, H.Doc. 109-157, 109th Cong., 2nd sess. (Washington: GPO, 2007) (hereafter *House Rules and Manual*), p. 806.

[27] *Congressional Record*, daily edition, vol. 153 (January 4, 2007), pp. H8, H11-H13.

[28] *Congressional Record*, daily edition, vol. 149 (November 21, 2003), p. H12296; *Congressional Record*, daily edition, vol. 149 (December 8, 2003) p. H12750; H12846-H12854; Gebe Martinez, "Long Back-and-Forth House Vote Ran Afoul of Democrats, not Rules," *CQ Weekly*, November 29, 2003, p. 2962; R. Jeffrey Smith, "GOP's Pressing Question on Medicare Vote; Did Some Go Too Far To Change a No to a Yes?" *Washington Post*, December 23, 2003, p. A1.

[29] *Congressional Record*, daily edition, vol. 154 (March 12, 2008), p. H1543; Susan Crabtree, "Still seething over prolonged ethics vote, Boehner mulls stonewalling appointments," *The Hill*, March 13, 2008, p. 3; Jonathan Weisman, "House Creates New Panel On Ethics," *Washington Post*, March 12, 2008, p. A1.

[30] *Congressional Record*, daily edition, vol. 154 (March 11, 2008), pp. H1532-H1533. For more information on questions of privileges of the House, see CRS Report 98-411, *Questions of Privilege in the House*, by (name red acted).

[31] *Congressional Record*, daily edition, vol. 149 (December 8, 2003), p. H12846-H12854; *Congressional Record*, daily edition, vol. 151 (December 8, 2005), p. H11264-H11266.

[32] This paragraph summarizes some of the issues concerning enforceability of the rule discussed during a hearing before the Select Committee to Investigate the Voting Irregularities of August 2, 2007 (U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Voting in the House of Representatives—Rules, Procedures, Precedents, Customs and Practice*, 110th Cong., 1st sess., October 25, 2007, pp. 18-22).

privileges of the House avoided these procedural difficulties, and furthermore provided an opportunity for Members to present relevant information concerning the length of the vote and the purpose for holding it open.

New Policies Announced by the Speaker Affecting House Floor Procedure

At the start of each Congress, the Speaker customarily makes announcements to the chamber concerning House operations and the legislative process. The announced policies are not rules of the House, but they indicate how the Speaker intends to carry out various responsibilities granted to the Speaker by law and House rules. Most of the policies announced by the Speaker at the start of the 111th Congress were originally announced by previous Speakers, and have been reiterated each Congress since. On January 6, 2009, however, the Speaker did make two modifications to announced policies from previous Congresses related to floor proceedings. The first concerned the closing of votes taken by electronic device and the second addressed the use of the House floor.

Conclusion of a Vote by Electronic Device

The Speaker announced that the 1995 policy concerning the conduct of votes by electronic device would continue, with a modification that gave the Speaker's endorsement to the existing practices for closing a vote taken by electronic device. The announcement did not change the long-standing practices for ending a vote. Prior to this modification, however, no policy was published concerning the manner of closing a vote taken by electronic device. In the 110th Congress, the presiding officer closed an electronic vote without following the appropriate protocol, which led to the creation of the Select Committee to examine voting procedures and the recommendation to modify the Speaker's policy.[33]

As described above, the House rules set a minimum, but not a maximum, on the length of time an electronic vote will be held open. In practice, the presiding officer exercises some discretion on when to close a vote. The announced policy of the Speaker states that electronic votes will be closed as soon as possible after the minimum time limit has expired. Generally, however, the presiding officer works to ensure that any Member intending to vote has an opportunity to do so, and indeed the policy of the Speaker includes the assurance that "No occupant of the Chair would prevent a Member who is in the well before the announcement of the result from casting his or her vote."[34]

[33] U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Final Report and Summary of Activities*, 110th Cong., 2nd sess., September 25, 2008, H.Rept. 110-885 (Washington: GPO, 2008), pp. 24-26. For more information on the closing of the vote in the 110th Congress and the creation of the Select Committee, see CRS Report RL34570, *Record Voting in the House of Representatives: Issues and Options*, by (name redacted), (name redacted), and (name redacted), pp. 97-100.

[34] "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 155 (January 6, 2009), p. H 22.

The 2009 modification of the Speaker's announced policy establishes that the best practice is "for presiding officers is to await the Clerk's certification that a vote tally is complete and accurate."[35] The Select Committee to Investigate the Voting Irregularities of August 2, 2007 did not recommend that a detailed description of the practice for closing a vote be included in the announcement, or raised to the level of a standing rule, in part because the clerks need flexibility to change processes of this nature that might be affected by changes to the electronic voting system or the House chamber.[36]

For many years, the presiding officer and the clerks have followed established practices for closing a vote taken by electronic device. After the minimum time has elapsed, the presiding officer indicates that the available time is about to expire by asking if any other Members wish to vote or to change their votes.[37] After allowing Members to respond, the Reading Clerk then reads the names of the Members who changed their votes in the well from a list prepared by a Tally Clerk.[38] Shortly after that announcement, the electronic voting stations are closed. The clerks wait several moments after closing the electronic voting stations to allow any Members to cast votes in the well, to ensure that all well cards are accounted for, and to be certain all information has processed through the system. The final vote count is recorded on what is referred to as a "tally slip." The clerk gives the tally slip to the Parliamentarian, who hands it to the presiding officer, who uses it to announce the outcome of the vote. A recorded vote is considered to be over when the presiding officer makes an unequivocal statement of the result.[39]

Use of the House Floor

Pursuant to authority granted to the Speaker over "general control of the Hall of the House" in House Rule I, clause 3, the Speaker also announced that the chamber of the House should not be used for "mock proceedings on the floor" or "political rallies." Clause 4 of House Rule IV has long prohibited the use of the hall of the House for anything other than legislative sessions, caucuses of Members of the House, and official ceremonies. When the House is not in session, however, it is common for Members and staff to escort visitors onto the House floor.

As referenced in the Speaker's announced policy, during the August recess of 2008, Members of the House held simulated legislative proceedings in the hall of the House. Members delivered speeches on the House floor and distributed recordings of the proceedings with the stated intent of calling attention to energy policy issues they felt were not adequately addressed during the

[35] "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 155 (January 6, 2009), p. H 22.

[36] U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Final Report and Summary of Activities*, 110th Cong., 2nd sess., September 25, 2008, H.Rept. 110-885 (Washington: GPO, 2008), p. 25.

[37] Members who wish to change their votes in the last 5 minutes of a 15-minute vote must do so by filling out a card in the well, rather than by using an electronic voting station. During a 5-minute vote, Member can change their votes at the electronic voting stations the entire time.

[38] Any vote changes made after the list of names is read but before the vote is closed are announced by the Clerk.

[39] For more information on the process of closing an electronic vote, see CRS Report RL34366, *Electronic Voting System in the House of Representatives: History and Evolution*, by (name redacted), pp. 11-12 and U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Final Report and Summary of Activities*, 110th Cong., 2nd sess., September 25, 2008, H.Rept. 110-885 (Washington: GPO, 2008), pp. 5-7.

legislative session.[40] The Speaker's announced policy aimed to clarify that such use of the chamber was not appropriate and should not occur again.

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[40] Ben Pershing, "House GOP Protests Delay On Drilling Bill; Members Assail Democrats For Not Bringing It to Vote," *Washington Post*, August 2, 2008, p. A3; Edward Epstein, "House Adjourns, But Republicans Linger to Bash Democrats on Energy," *CQ Today Online News*, August 1, 2008; Kathleen Hunter, "Two More Weeks of Energy Protests, Boehner Says," *CQ Today Online News*, August 8, 2008; Steven T. Dennis, "Boehner: GOP Has Pelosi on the Run," *Roll Call*, August 11, 2008.